



PROTECTING VIRGINIA'S NONTIDAL WETLANDS: Closing the Federal Loopholes

Background

- Between 1780 and 1990, Virginia lost 42% of its wetland resources
- Between 1956 and 1977, over 63,000 acres of wetlands were lost.
- Between 1982 and 1989, Chesapeake Bay watershed (NY, PA, MD, DC, VA) lost over 17,000 acres of wetlands.

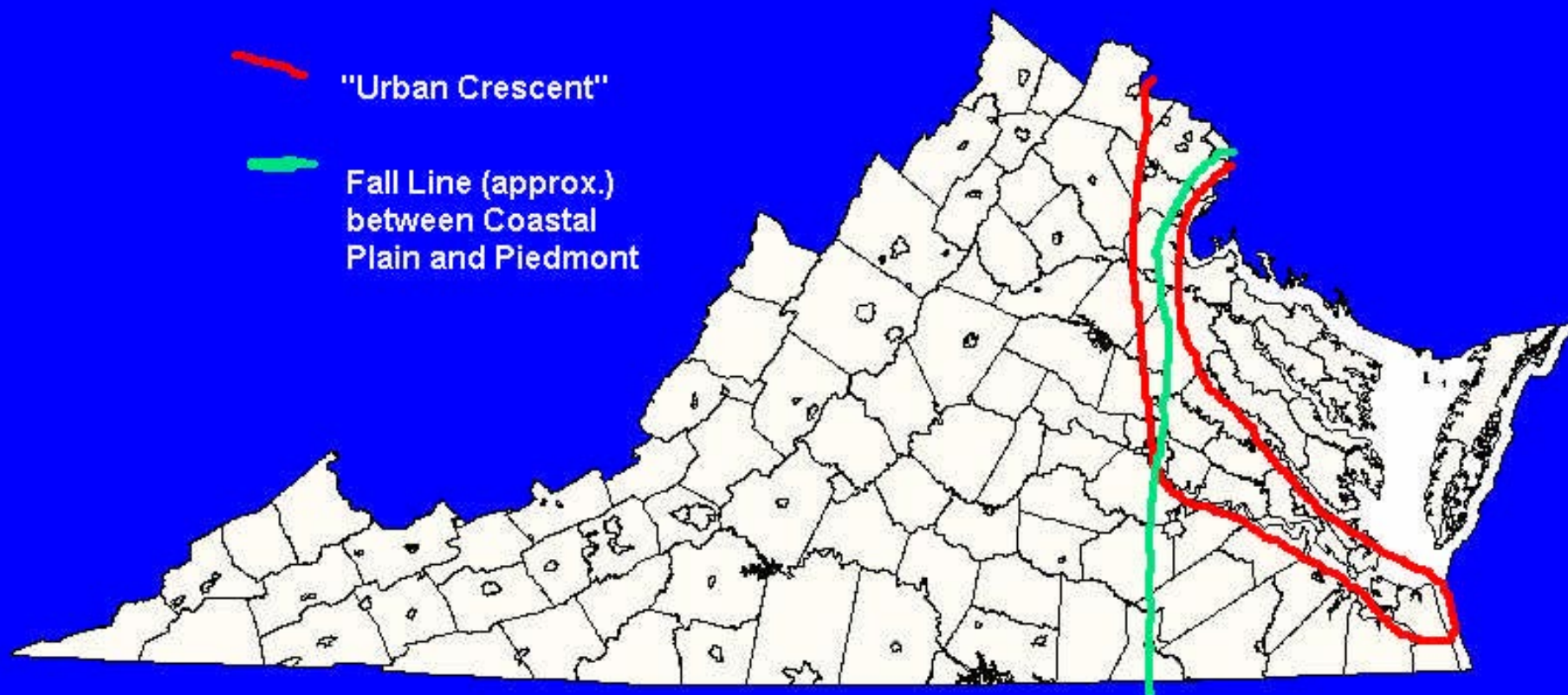
Background

- ☞ Currently, Virginia has 1,044,900 acres of wetlands; 23% tidal, 77% nontidal¹
- ☞ Of 804,573 acres of nontidal wetlands:
 - 750,000 acres are palustrine
 - 380,000 acres are headwaters
 - over 150,000 acres can be considered isolated

¹ Based on 8/2000 data from Virginia Institute of Marine Science

Background

- ☘ Most land development in Virginia is occurring in the “Urban Crescent” (D.C., south to Richmond, and east to Norfolk)
- ☘ Most of this area is in the Coastal Plain physiographic province
- ☘ Approximately 58% of all Virginia wetlands are located in this area



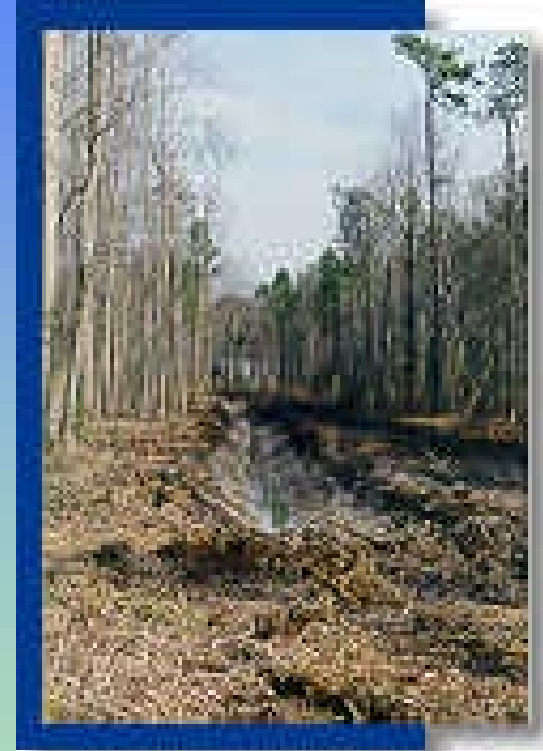


Issue

- Recent court decisions have created loopholes in federal jurisdiction
 - Tulloch
 - Wilson case (4th Circuit only-VA, NC, SC)
 - SWANCC

Key Problem: Tulloch Ditching

- Estimates of greater than 588,000 acres of Virginia's nontidal wetlands were susceptible to ditching and draining
- Over 2700 acres of nontidal wetlands in Virginia were actually ditched between 1997 and 2000 as a result of the Tulloch court decision



Key Problem: Impacts to Isolated Wetlands

- Estimates of over 180,000 acres of isolated wetlands in Virginia
- Over 70 acres of isolated wetlands filled without a permit or compensation between 1998 and 2000



General Assembly Takes Notice

- Initially looking for “fix” to Tulloch ditching and unpermitted impacts to isolated wetlands
- Series of bills proposed to revise state statute regulating nontidal wetlands
- Some proposed more comprehensive revisions to statute creating “nontidal wetlands law”

Why it worked

- Trade off between more comprehensive program and expedited permitting
- Builds on existing Virginia Water Protection Permit Program but created nontidal wetlands program independent of Section 401 certification
- State must seek State Programmatic General Permit from Corps to reduce duplication of permitting efforts

What is regulated in addition to Section 401 Certification

- ☞ Excavation in wetlands (July 1, 2000)
- ☞ On or after October 1, 2001, the following activities in a wetland:
 - new activities to cause draining or other new activities, causing significant alteration or degradation of existing wetland acreage and function
 - filling or dumping
 - permanent flooding or impounding

What is exempt

- ☞ Activities Exempt from VWP regulation:
- Normal agricultural activities
 - Normal silvicultural activities
 - Normal residential lawn and yard maintenance and use activities
 - Isolated wetlands of minimal ecological value (<1/10 acre, not forested, no t&e or special community, not in floodplain)



Regulatory Process

- ☘ Technical Advisory Committee (TAC)
formed with 30 people representing
varied constituencies
- ☘ TAC charged with assisting VWP program
in developing workable regulations
- ☘ TAC met 8 times in 6 months
- ☘ Nontidal wetland regulation and 4 general
permits were developed

Regulatory Process

🐸 Overview of General Permits:

- Generally cover impacts from certain activities for up to 2 acres of wetlands, 500 l.f. perennial stream, 1500 l.f. intermittent stream
- Standard conditions allow for simplified application and review
- Reduced DEQ review time (max 45 days)
- No public comment or hearings on projects seeking coverage



Implementation Results

- ☘ Since July 2000, unpermitted Tulloch ditching has stopped in Virginia
- ☘ 1 permit application to Tulloch ditch has been received
- ☘ Since October 2001, unpermitted impacts to isolated wetlands have stopped

Implementation Results

🌿 How we permit Tulloch ditching:

- Impact area is the ditch footprint plus adjacent area that is effectively drained
- Full Compensation required for the entire impact area
- This approach is an economic deterrent because fill footprint is often smaller than ditch impact footprint

How DEQ Regulates Isolated Wetlands

- ☘ Impacts in isolated wetlands regulated independent of Section 404 jurisdiction, as they are part of “state waters”
- ☘ Can waive requirement for permit for isolated wetlands of “minimal ecological value” (<1/10 acre, not forested, no t&e or special community, not in floodplain)

How DEQ Regulates Isolated Wetlands

- ☞ Corps will continue to approve delineations and make isolated wetland determination
- ☞ Corps will note that for isolated wetlands applicant must seek permit from DEQ even if no Section 404 permit is required
- ☞ Coverage likely under one of our new general permits; avoidance and minimization required; compensation for all impacts over 1/10 acre

Streamlining The State/Federal Process

- 🌿 Corps issuing State Programmatic General Permit (SPGP) for development and transportation impacts
- 🌿 No overlap between DEQ General Permits and Corps NWP's until activity covered under SPGP
- 🌿 Corps and DEQ working on MOA regarding coordination of duties

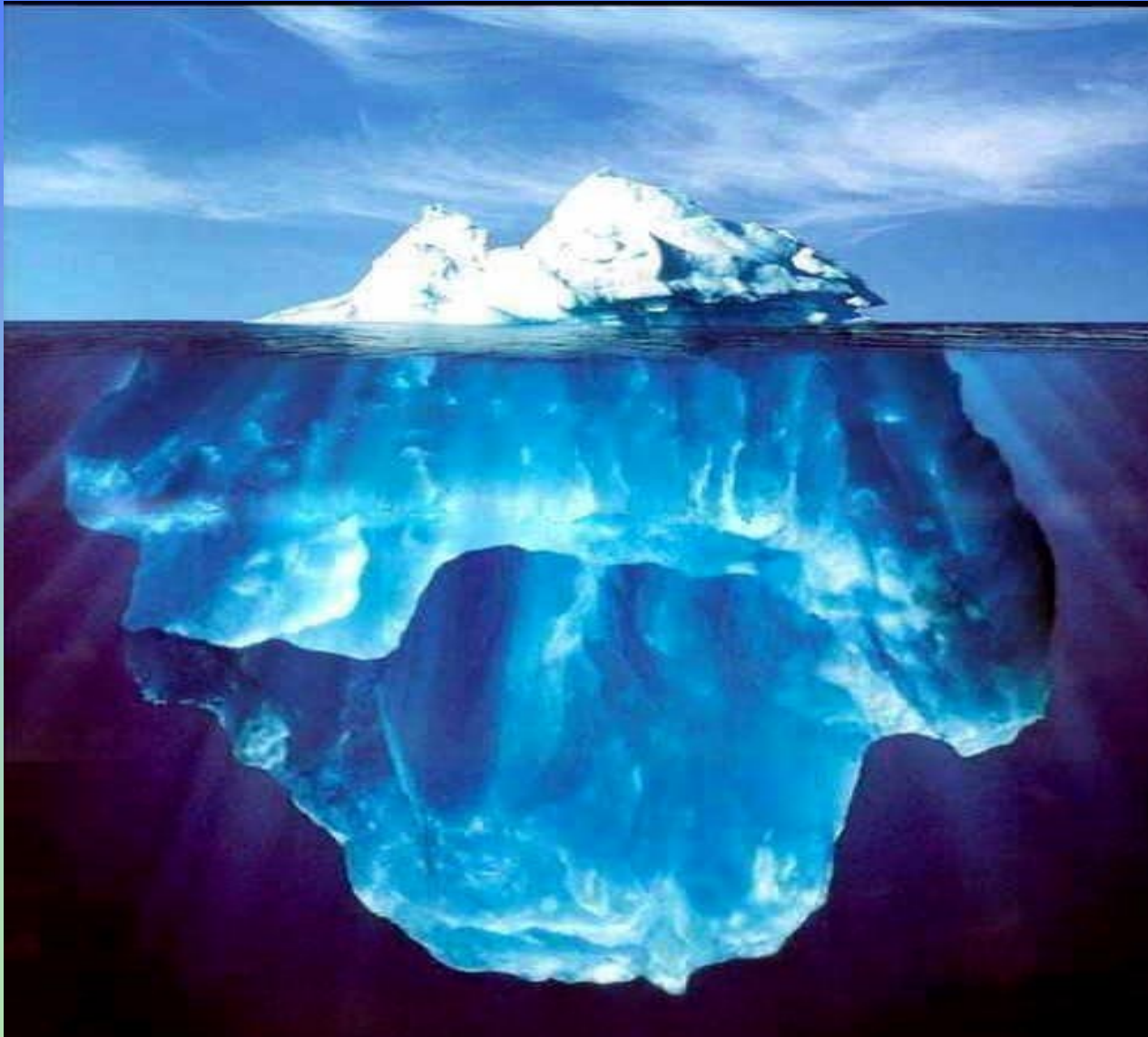
What is an SPGP?

- ☞ Type of Corps General Permit that feeds off of DEQ General Permits
- ☞ Tiered approach to issuing permits:
 - Tier I: DEQ issues alone (<1/2 acre)
 - Tier II: DEQ issues, Corps reviews and either issues or yields to DEQ permit (1/2 to 1 acre)
 - Tier III: both DEQ and Corps issue (>1 acre)
- ☞ Anticipate SPGP in Fall 2002

Success of the Program -- Something For Everyone

- 🌿 Environmentalists -- protection of more wetland resources
- 🌿 Developers -- Quicker permitting, more certainty, less regulatory duplication
- 🌿 Regulators -- Clearer regulation, GPs minimize paperwork, less paperwork means more time for compliance inspection

Just the tip of the iceberg...



Still have questions?????

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